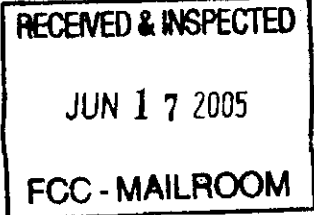


Nathaniel Hawthorne
Law Office
Attorney at Law/Consultant
Admitted in Ohio, Illinois, District of Columbia
nhawthorne@earthlink.net

www.telecomlawyer.com/ email:



Express Mail EV432181092 US

27600 Chagrin Blvd., Ste 265
Cleveland, Oh 44122
tel: 216.514.4578

DOCKET FILE COPY ORIGINAL

June 14, 2005

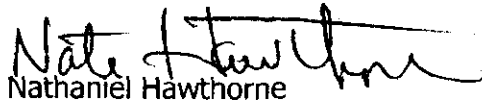
Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W. Suite TW-A325
Washington, D.C. 20554

Re: Greene County Schools , Appeal and Demand for Expedited Relief

This is an appeal and request for expedited relief from a decision by the Schools and Libraries Division of the USAC to the Federal Communications Commission.

Enclosed are the original and four copies of the Appeal. An extra copy is also enclosed; please time stamp the extra copy and return it to me in the enclosed self addressed-stamped envelope.

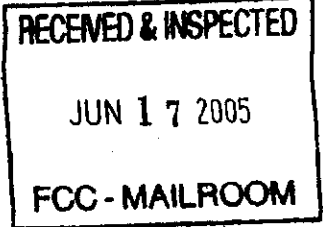
Sincerely,


Nathaniel Hawthorne

No. of Copies rec'd 0+4
List ABCDE

Express Mail EV 432181092 US

**Before the
Federal Communications Commission
Washington, D.C. 20554**



| | | |
|--------------------------------------|---|-----------------------|
| In the Matter of the Appeal of the |) | File No. SLD - |
| |) | |
| Decision of the |) | |
| |) | |
| Universal Service Administrator by |) | |
| |) | |
| <u>Greene County Schools</u> |) | |
| |) | |
| |) | |
| Federal-State Joint Board on |) | |
| |) | CC Docket No. 96 - 45 |
| Universal Service |) | |
| |) | |
| Changes to the Board of Directors of |) | |
| |) | |
| The National Exchange Carrier |) | CC Docket No. 97 - 21 |
| |) | |
| Association, Inc. |) | |

**Appeal
and
Demand for Expedited Relief**

June 6, 2005

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W. Suite TW-A325
Washington, D.C. 20554

This is an appeal and request for expedited relief from a decision by the Schools and Libraries Division of the USAC to the Federal Communications Commission.

Enclosed are the original and four copies of the Appeal. An extra copy is also enclosed; please time stamp the extra copy and return it to me in the enclosed self addressed-stamped envelope.

(1) Funding Commitment Decision Letter Appealed

| | |
|--------------------------------|-----------------------|
| Form 471 Application Number: | 421581 |
| Funding Year 2004: | 07/01/2004-06/30/2005 |
| Billed Entity Number: | 127380 |
| Date of Funding Denial Notice: | May 24, 2005 |
| Date of Appeal: | June 6, 2005 |

(2) SLD Contact Information

Max Anderson
Technology Coordinator
Greene County Schools
(706) 453-3318
201 N. Main St
GREENSBORO, GA 30642

(3) Funding Request Numbers Appealed

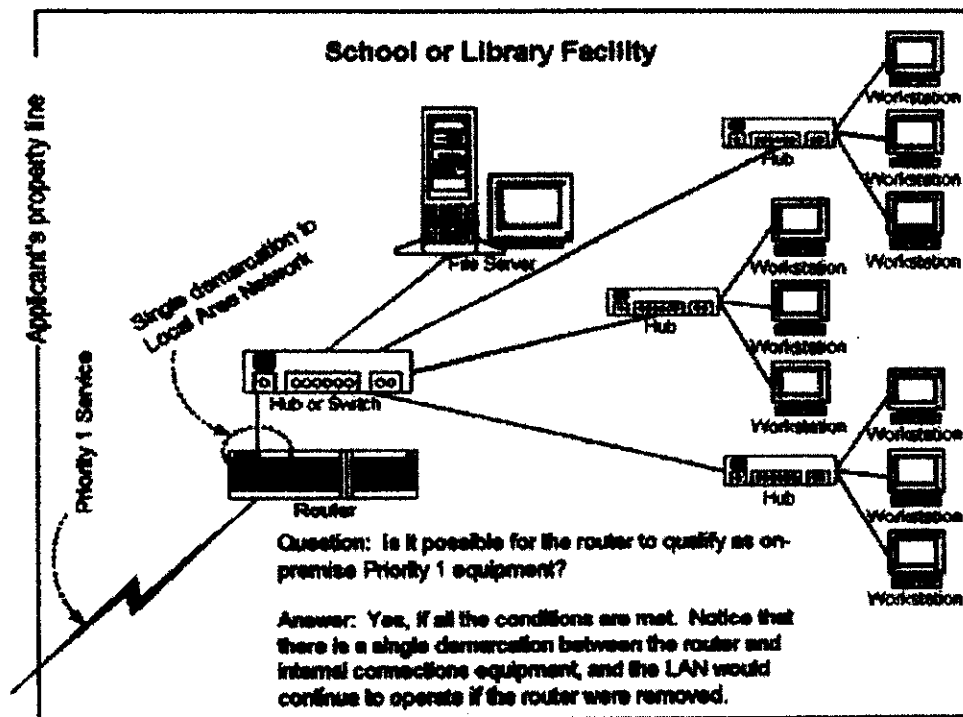
FRN – 1162422

(4) The SLD stated that funding is denied because:

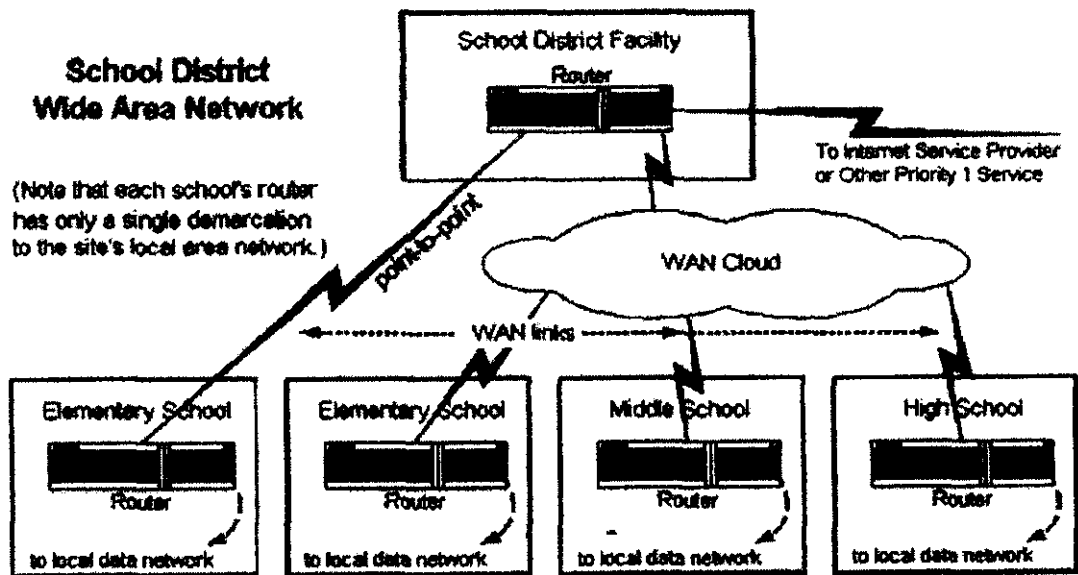
"The on-premise equipment does not meet the requirements of the Tennessee Order and is therefore considered to be Internal Connections."

(5) The "Tennessee Order" was incorrectly applied by the SLD

- a) Greene applied for Internet Access service, a Priority 1 Service. The basis for Greene's Application is the SLD website. The SLD's website uses the following illustration for eligible funding for Priority 1 Internet Access service:



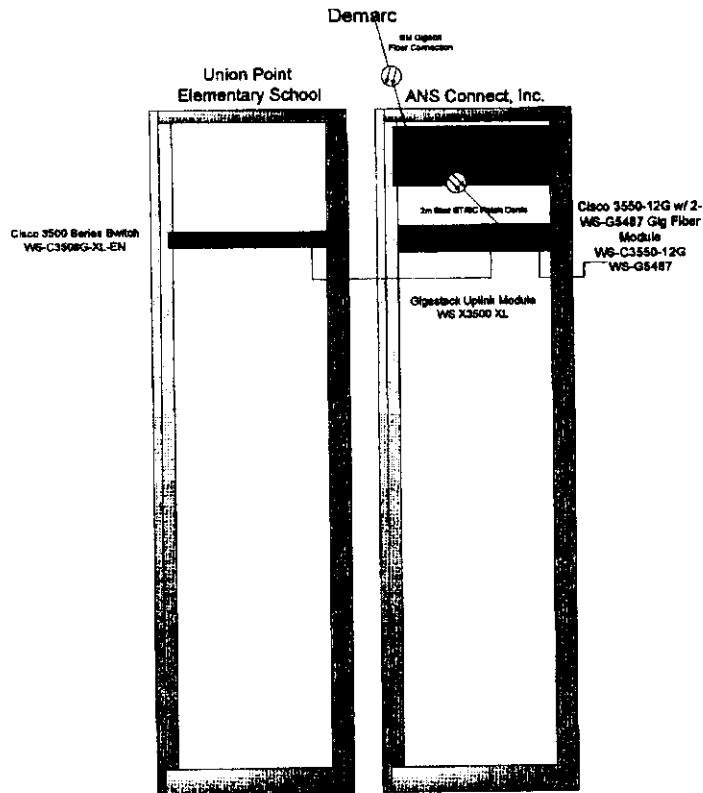
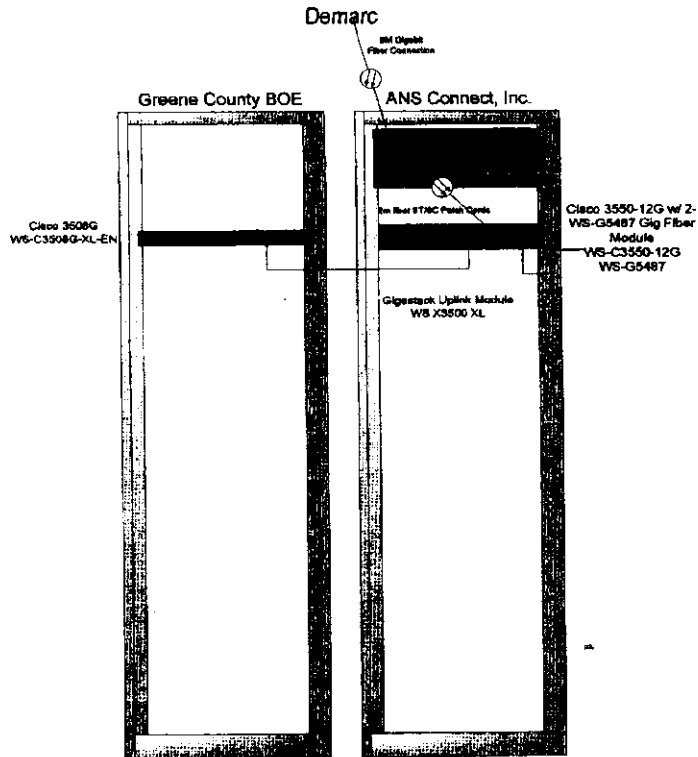
b) And, the SLD illustration for eligible WAN funding provides:



Question: What equipment can potentially qualify for on-premise Priority 1?

Answer: The routers can meet FCC conditions only if the information transmitted over this equipment is limited to that associated with the end-to-end Priority 1 service. For example, if the Priority 1 service is Internet access, then data could not be exchanged directly among the sites across the WAN links.

c) The vendor, ANS Connect, provided diagrams of the Internet Access service that would be to Greene. Except for more detail, the vendor provided diagrams are identical to the SLD diagrams.



The "demarc" is shown clearly; it's between Greene on the "left", and the vendor on the "right", in both diagrams. Exhibit A.

- d) The SLD denied funding because (A) the vendor's on-premises equipment was allegedly owned by Greene, and thus Internal connections. The evidence provided to the SLD does not support the SLD's conclusion. The following response was sent to the SLD clearly stating that on premises equipment for Internet Access was owned by the vendor.

"October 25, 2004

Bill Kanyuck
Associate Manager
Schools and Libraries Division
Program Integrity Assurance
80 South Jefferson Road
Whippany, New Jersey 07981
973-884-8176 (phone)
973-599-6521 (fax)

Dear Mr. Kanyuck:

Per your request the following is the response to your questions regarding FCC Form 471 Application #'s 421581.

SLD Request: (Answers are immediately following the questions.)

Based on the documentation provided it appears that FRN 1162422 includes charges associated with the on-premise equipment. The FCC has indicated that equipment at the applicant site is presumed to be Internal Connections, but that this presumption can be overcome in certain circumstances. In order for us to evaluate your request, please provide the following information. You may consult

with your service provider for assistance, if desired. Please be sure to sign your response and list your title.

1.) *Is the leased on-premise equipment an integral component of a Telecommunications or Internet Access service?* **YES**

2.) *Will the leased on-premise equipment be provided by the same service provider that provides the associated Telecommunications Service or Internet Access service?* **YES**

3.) *Does responsibility for maintaining the equipment rest with the service provider?* **YES**

4.) *Will ownership of the equipment transfer to the school or library in the future?* **NO**

5.) *Does the relevant contract or lease include an option for the applicant to purchase the equipment?* **NO**

6.) *Will the leased equipment be used at the applicant site for any purpose other than receipt of the eligible Telecommunications Services or Internet Access of which it is a part?* **NO**

Please note that the following two questions are limited to data communications functionality, and do not include technologies limited to traditional voice communication.

7.) *Will the school's or library's internal data communications network function without dependence on the equipment?* **YES**

8.) *Are there any contractual, technical, or other limitations that would prevent the service provider from using the leased on-premise data communications equipment in part for other customers?* **NO**

Sincerely,

Max Anderson
Greene County School District"

e) And, for authority, the Brooklyn Order¹ clearly states that:

9. ...

"SLD acknowledged that the Commission has recognized in the *Tennessee Order* that some infrastructure costs may be passed on as a component of service charges.

...

12. More specifically, as an initial matter, we reaffirm the principle set forth in the *Tennessee Order* that universal service funds may be used to fund equipment and infrastructure build-out associated with the provision of eligible services to eligible schools and libraries. We conclude, therefore, that our rules and Commission precedent do not bar eligible schools and libraries from seeking universal service funding for costs for infrastructure investment associated with the provision of telecommunications services, provided that: (1) the specific services and uses of those services are eligible for universal service funding; and (2) the costs for service to be provided over shared-use infrastructure are properly allocated so that the fund only pays for the costs associated with providing services to the eligible schools or libraries.³⁴ This conclusion, however, does not resolve the issue of how or in which manner the fund may pay for such infrastructure investment, given the facts before us.

Conclusion:

Greene is Requesting the Following Action by the FCC:

¹ File No. SLD-149423, CC Docket No. 96-45, CC Docket No. 97-21, adopted, Sept 25; Rel. Sept 26, 2000

- (a) There is no violation of the Tennessee Order since all the equipment was vendor owned, and is used solely for the provision of Internet Access service.**
- (b) There is no evidence that Greene was purchasing a WAN. Indeed, there was never any intent to "purchase" a WAN.**
- (c) Within 30 days or less Order funding for the Internet Access services requested in the 471 Application, specifically FRN – 1162422**
- (d) Set aside funds to totally fund the Greene request.**

Respectfully submitted,


Nathaniel Hawthorne

Ohio Bar # 0008881
Nathaniel Hawthorne,
Attorney/Consultant, Ltd.
27600 Chagrin Blvd., #265
Cleveland, OH 44122
tel.: 216/514.4798
nhawthorne@earthlink.net

Attorney for
Greene County Schools

Cc: Max Anderson

Greene County School
District

Demarc

3M Catalyst
Fiber Connection

Union Point
Elementary School

ANS Connect, Inc.

1

2m Fiber S778C Patch Cords

Cisco 3550-12G w/ 2-
WS-G5487 Gg Fiber
Module
WS-C3550-12G
WS-G6487

Gigasetback Uplink Module
WS X3500 XL

Cisco 3500 Series Switch
WS-C3500G-XL-EN

Demarc

SN Digital
Fiber Connection



ANS Connect, Inc.

Greene County BOE

Cisco 3550-12G w/ 2-
WS-G5487 Gig Fiber
Module
WS-C3550-12G
WS-G5487

2m Fiber SFPs Patch Cord

Gigasetback Upstream Module
WS-X3500 XL

Cisco 3500G
WS-C3500G-XL-EN

[Greene County Letterhead]

October 25, 2004

Bill Kanyuck
Associate Manager
Schools and Libraries Division
Program Integrity Assurance
80 South Jefferson Road
Whippany, New Jersey 07981
973-884-8176 (phone)
973-599-6521 (fax)

Dear Mr. Kanyuck:

Per your request the following is the response to your questions regarding FCC Form 471 Application #'s 421581.

SLD Request: (Answers are immediately following the questions.)

Based on the documentation provided it appears that FRN 1162422 includes charges associated with the on-premise equipment. The FCC has indicated that equipment at the applicant site is presumed to be Internal Connections, but that this presumption can be overcome in certain circumstances. In order for us to evaluate your request, please provide the following information. You may consult with your service provider for assistance, if desired. Please be sure to sign your response and list your title.

- 1.) *Is the leased on-premise equipment an integral component of a Telecommunications or Internet Access service?* **YES**
- 2.) *Will the leased on-premise equipment be provided by the same service provider that provides the associated Telecommunications Service or Internet Access service?* **YES**
- 3.) *Does responsibility for maintaining the equipment rest with the service provider?* **YES**
- 4.) *Will ownership of the equipment transfer to the school or library in the future?* **NO**
- 5.) *Does the relevant contract or lease include an option for the applicant to purchase the equipment?* **NO**
- 6.) *Will the leased equipment be used at the applicant site for any purpose other than receipt of the eligible Telecommunications Services or Internet Access of which it is a part?* **NO**

Please note that the following two questions are limited to data communications functionality, and do not include technologies limited to traditional voice communication.

- 7.) *Will the school's or library's internal data communications network function without dependence on the equipment?* **YES**

8.) *Are there any contractual, technical, or other limitations that would prevent the service provider from using the leased on-premise data communications equipment in part for other customers?* **NO**

Sincerely,

Max Anderson
Greene County School District